

Case No: _____

UNITED STATES COURT OF APPEALS
for the
NINTH CIRCUIT

UNITE HERE! LOCAL 5,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Appeal from National Labor Relations Board
Cases Nos. 20-CB-163657, 20-CB-166055, and 20-CB-171212

PETITION FOR REVIEW

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Petitioner UNITE HERE! Local 5, which was the Respondent in the administrative proceedings, hereby petitions this Court for review of the Decision of the National Labor Relations Board in cases 20-CB-163657, 20-CB-166055, and 20-CB-171212, which were consolidated and subsequently decided by the Board under the title *UNITE HERE! Local 5 and Aqua Aston Hospitality, LLC d/b/a Waikiki Beach Hotel And Hotel Renew*, reported at 365 NLRB No. 169 (December 16, 2017). A copy of the Decision and Order is attached hereto as Exhibit A.

Dated: January 4, 2018

Respectfully submitted,

By: /s/ David L. Barber
David L. Barber

Attorneys for Petitioner,
UNITE HERE! Local 5

EXHIBIT A

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

UNITE HERE! Local 5 and Aqua-Aston Hospitality, LLC d/b/a Waikiki Beach Hotel And Hotel Renew. Cases 20–CB–163657, 20–CB–166055, and 20–CB–171212

December 16, 2017

DECISION AND ORDER

BY CHAIRMAN MISCIMARRA AND MEMBERS PEARCE
AND MCFERRAN

On January 18, 2017, Administrative Law Judge Lisa D. Thompson issued the attached decision in Cases 20–CB–163657 and 20–CB–166055. On January 27, 2017, Administrative Law Judge Jeffrey D. Wedekind issued the attached decision in Case 20–CB–171212. By order dated February 13, 2017, the Board granted the Respondent’s motion to consolidate these cases. Thereafter, the Respondent filed exceptions and a supporting brief, the General Counsel and Charging Party filed answering briefs, and the Respondent filed a reply brief.

The Board has considered the decisions and the records in light of the exceptions and briefs and has decided to affirm the judges’ rulings, findings,¹ and conclusions²

¹ The Respondent has excepted to some of Judge Thompson’s credibility findings. The Board’s established policy is not to overrule an administrative law judge’s credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² Contrary to the assertion of our dissenting colleague, we do not conclude that “any picket line blockage is a per se violation regardless of duration.” Rather, we agree with the judges that, under the particular circumstances of this case, the Respondent’s conduct was not “reasonably calculated to coerce anti-union or non-union [employees] in the exercise of their right, under the amended Act, to refrain from joining the Union.” *Electrical Workers Local 98 (Tri-M Group, LLC)*, 350 NLRB 1104, 1107 (2007) (internal quotations omitted), enfd. 317 Fed.Appx. 269 (3d Cir. 2009). Despite our colleague’s contentions, the Board has found that blocking employees’ ingress or egress can violate Sec. 8(b)(1)(A), even if the blocking does not occur in the context of a strike. See id. at 1107–1108; *Electrical Workers Local 98 (MCF Services)*, 342 NLRB 740, 752 (2004), enfd. 251 Fed.Appx. 101 (3d Cir. 2007). The Board has also found violations where the union acted peacefully and blocked employees for only a short period. See, e.g., *Shopmen’s Local 455 (Stokvis Multi-Ton Corp.)*, 243 NLRB 340, 348 (1979); *Metal Polishers Local 67 (Alco-Cad Nickel Plating Corp.)*, 200 NLRB 335, 336, 339–340 (1972). Finally, we find the facts of this case distinguishable from the cases relied upon by our dissenting colleague. In those cases, the picketing occurred only on one or two occasions and affected relatively few employees. See *Hendricks-Miller Typographic Co.*, 240 NLRB 1082 (1979) (a total of four employees were delayed on two different occasions); *Service Employees Local 50 (Evergreen Nursing Home)*, 198 NLRB 10, 11–12 (1972) (one employee and a few trucks were briefly delayed). Here, conversely, the Respondent picket-

and to adopt the recommended Orders as modified and set forth in full below.³

ORDER

The National Labor Relations Board orders that the Respondent, UNITE HERE! Local 5, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Blocking or impeding Waikiki Beach Hotel employees or others while in the presence of hotel employees from entering or exiting the hotel’s property.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its offices in Honolulu, Hawaii, copies of the attached notice marked “Appendix”⁴ in English, Ilocano, and Tagalog. Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Within 14 days after service by the Region, deliver to the Regional Director for Region 20 signed copies of the notice in sufficient number for posting by Aqua-Aston Hospitality, LLC at its Honolulu, Hawaii facility, if it wishes, in all places where notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the

ed at least 10 different times over many months, and any valet employee who attempted to cross the picket line was delayed for several minutes.

³ The attached Order has been modified to reflect the consolidation of the cases and to conform to the Board’s standard remedial language, and we shall substitute a new notice to conform to the Order as modified.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 16, 2017

Philip A. Miscimarra, Chairman

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER PEARCE, dissenting.

The Supreme Court has long recognized that the right of employees to engage in peaceful organizational and recognitional picketing with the assistance of a labor organization is one of the most fundamental activities protected by Section 7 of the Act. *Lechmere, Inc., v. NLRB*, 502 U.S. 527, 533 (1992); *NLRB v. Fruit Packers (Tree Fruits)*, 377 U.S. 58, 62–63 (1964); *NLRB v. Drivers*, 362 U.S. 274, 279 (1960). Accordingly, the Board's authority to regulate such peaceful picketing under Section 8(a)(1)(A) is "limited to authority to proceed against union tactics involving violence, intimidation, and reprisal or threats thereof." *Id.* at 290. Here, the judges and my colleagues concede that the Respondent at all times engaged in peaceful organizational picketing; nonetheless, they find that the Respondent violated Section 8(b)(1)(A) solely because on certain occasions during that picketing, some vehicles were momentarily stopped while entering or exiting a hotel. I disagree and find that the minimal delays could not have reasonably coerced or intimidated employees, and are not the kind of obstructive conduct that Section 8(b)(1)(A) was meant to reach. Therefore, I would dismiss the complaint.

The facts in these consolidated cases are not materially in dispute. In February 2015, the Respondent commenced a campaign to organize employees of the Aston Waikiki Beach Hotel (hotel) in Waikiki, Hawaii. Approximately once a week during that campaign, which has since ceased, the Respondent established a peaceful organizational picket line on a public sidewalk in front of the hotel's entrance where valet employees greeted arriving guests and offered to ferry their vehicles to a nearby parking garage. Vehicles approaching or leaving the hotel entrance, whether driven by valets, taxi drivers, guests or visitors, proceeded around a circular driveway that bisects the public sidewalk and then turned onto a public boulevard.

At no time during the Respondent's organizing campaign did its picketing infringe on hotel property, or last longer than 1 hour. The pickets followed the same routine on each occasion by walking back and forth in a narrow oblong path along the public sidewalk, traversing the driveway. The pickets carried signs, chanted slogans through bullhorns, and banged metal cans with drumsticks.

As each vehicle approached or exited from the hotel's front entrance, the driver necessarily had to stop as the pickets progressed along the public sidewalk. The wait was minimal, however. The delay typically averaged 2–3 minutes before a picket captain directed the line to part to allow the vehicles to pass.¹ Although the Employer called the police on most days that the picketing occurred, the police assisted with crowd control. They never cited the pickets for blocking the hotel's entrance and exit; nor is there any evidence that they charged any pickets with trespassing on hotel property or any other unlawful conduct.

Notwithstanding these facts, the judges found 8(b)(1)(A) violations in both cases, determining that on nine occasions the Respondent obstructed the driveway exit, and on one occasion obstructed the driveway entrance. The judges found, and my colleagues agree, that the failure of the pickets to break ranks *immediately* on each of these occasions when a vehicle approached constituted picket line "blocking" that unlawfully restrained and coerced hotel employees. Under these facts, I cannot agree that the conduct of the pickets is unlawful under Section 8(b)(1)(A) of the Act.

Discussion

Section 8(b)(1)(A) states that it is unfair labor practice for a labor organization or its agents "to restrain or coerce employees in the exercise of the rights guaranteed in Section 7." In analyzing an alleged 8(b)(1)(A) violation, the Board applies an objective standard that focuses on whether the conduct would have a reasonable tendency to restrain or coerce employees in the exercise of their Section 7 rights. *Carpenters (Society Hill Towers Owners' Assn.)*, 335 NLRB 814, 815 (2001), *enfd.* 50 Fed. Appx. 88 (3d Cir. 2002). Significantly, in applying this objective standard to picketing situations, like those at issue here, the Board is to consider all of the "surrounding circumstances" to determine whether blocking incidents restrain or coerce the employees of a picketed employer. See e.g. *Hendricks-Miller Typographic Co.*, 240 NLRB 1082, 1099 (1979); *Service Employees Local 50 (Evergreen Nursing Home)*, 198 NLRB 10, 12 (1972).

¹ The delay lasted less than 2 minutes on 6 of the 10 days, 2–4 minutes on 2 days, and 3–4 minutes on the other 2 days.

The judges and my colleagues failed to fully conduct this analysis. Had they done so, they could not reasonably find that the relevant surrounding circumstances support the conclusion that the Respondent restrained or coerced the hotel employees in the exercise of their Section 7 rights.

First, the nature of the picketing was entirely peaceful and orderly. The pickets did not physically or verbally accost valets or any other persons, or act toward them in any threatening, hostile or confrontational manner. To the contrary, the record reflects that interactions between the pickets and employees were friendly, with valets giving pickets “thumbs up” signs as the employees traversed the picket line. And as noted above, police on the scene at every picketing event never charged any picket with misconduct.

Second, unlike most cases in which 8(b)(1)(A) blocking violations have been found, the instant case did not involve a strike where the potential for employee coercion is greater than during an organizational campaign. In a strike, employees approaching a picket line are forced to make an observable Section 7 choice on whether to support a union by joining the strike (or honoring the picket line), or by refraining from doing so. And the consequences of the choice whether to cross the picket line may well linger, with ill feelings between strikers and nonstrikers after the strike ends. Here, the hotel employees were not confronted with such a dilemma. Any brief stoppages that occurred during the Respondent’s organizational picketing did not force the employees to make an observable choice on whether they supported the Respondent. That choice, were it to have been made at all, would have occurred privately in a secret ballot election.²

Third, because employees were not confronted by a strike, they were not faced with the prospect of lost employment due to the brief, intermittent stoppages. The only hotel employees subjected to the Respondent’s picketing were the valets who were already on the job and were only momentarily delayed from performing their parking duties. By contrast, in most cases where

the Board has found 8(b)(1)(A) violations, the picketing occurred during a strike and the blockages prevented employees from getting to, or leaving, their jobs. See e.g. *Operating Engineers Local 17 (Hertz Equipment Rental)*, 335 NLRB 578, 584 (2001) (strikers blocked employees from entering or leaving employer’s facility, requiring police to intervene); *Metal Polishers Local 67 (Alco-Cad Nickel Plating Corp.)*, 200 NLRB 335, 336 (1972) (strikers blocked employees from entering employer’s facility). In these strike circumstances, which the hotel employees here did not face, the Board has found a tendency to coerce nonstrikers in their Section 7 right to refrain from joining the strike.

Finally, the blockages were very brief. As stated above, the stoppages were the only factor the judges and my colleagues relied on in finding violations, and their holding is tantamount to a finding that *any* picket line blockage is a *per se* violation regardless of duration.³ The Board, however, has never applied such a strict liability standard.⁴ Indeed, in cases involving picket line blocking lasting as long or longer than here, the Board has found no 8(b)(1)(A) violation even when there were accompanying physical confrontations. For example, in *Hendricks-Miller Typographic Co.*, 240 NLRB at 1098–1099, the Board dismissed the 8(b)(1)(A) allegation that the union engaged in mass picketing where the pickets blocked ingress and egress on four occasions for periods generally longer than the brief blockage in this case. In finding no violation, the Board adopted the judge’s reasoning that the employees were only “delayed briefly in their attempts to enter the parking lot . . . [and n]o damage was done. No one was injured. No threats were made. No employee was prevented from working.” *Id.* at 1099. Accord, *Service Employees Local 50 (Evergreen Nursing Home)*, supra, 198 NLRB at 12 (no violation found, despite momentary blocking of several trucks entering and leaving nursing home and pickets blocking an employee for 2 minutes from entering home, where surrounding circumstances showed that “[n]o one was injured, nothing was thrown, no one was prevented from

² Judge Thompson, in Case 20–CB–163657 and 166055, is plainly wrong, therefore, by referring to the hotel workers as “non-strik[ers]” who reasonably would have been restrained by the Respondent’s protest activity and “redirected themselves away from the front of the hotel” in order to “refrain from participating in the Union’s protests.” As stated, this case did not involve a strike and there is no evidence that any employees, including valets, sought to avoid the front of the hotel because of the Respondent’s organizational activities. Even if they had, there would have been no resulting restraint or coercion affecting employees’ choice on whether to support or reject the Respondent’s organizational efforts, as there were other hotel entrances that included one reserved for employees.

³ Judge Thompson stated that “in general, the Board has found that the blocking of a vehicle’s ingress/egress, even for a short period of time, is coercive and violative of the Act,” citing *Operating Engineers Local 17*, supra, 335 NLRB at 584, and *Sheet Metal Workers Local 19 (Delcard Associates)*, 316 NLRB 426, 431 (1995). Judge Wedekind similarly stated that blockages are “generally unlawful regardless of whether it blocks employees’ ingress or egress for a short or long period of time, and/or whether it is accompanied by other violent or threatening conduct,” citing *Shopmen’s Local 455 (Stokvis Multi-Ton Corp.)*, 243 NLRB 340, 348 (1979), and *Metal Polishers Local 67 (Alco-Cad Nickel Plating Corp.)*, supra, 200 NLRB at 336.

⁴ The General Counsel and the Employer appear to agree that there is no *per se* standard, but contend in their answering briefs that judges did not apply such a standard.

going to work or leaving, and no vehicle was harmed or excluded from the premises.”).

Here, the basis for finding no unlawful restraint or coercion is even more compelling than in *Hendricks-Miller* and *Evergreen Nursing*. On each of the 10 days alleged in the complaint, the Respondent choreographed the same 1-hour picketing. Drivers were halted only briefly, ranging from less than 2 to 3–4 minutes, before the line parted allowing them to pass. And significantly, unlike the 8(b)(1)(A) violation cases where employees had no assurances whether or when the picket line would open for them, the valet drivers understood—based on the Respondent’s course of conduct—that they would experience only minimal delays. As valet driver Tolentino testified, “as soon as they’re done with their singing jingle, it’s always the same and then they let me go.”

The majority points to no case in which a violation was found where, as here, the blocking was entirely peaceful, of short duration, and did not involve a strike. Instead, they selectively cite from cases without accounting for all of their circumstances, as Board law requires. For example, in asserting that the Board has found ‘blocking’ violations even in the absence of a strike, the majority relies on a case involving additional conduct that supported the Section 8(b)(1)(A) violations. Thus, in *Electrical Workers Local 98 (MCF Services)*, 342 NLRB 740, 751–753 (2004), the union agent not only used his car to block a foreman from operating his fork-lift for 15–30 minutes, but also threatened the foreman with physical harm and photographed/videotaped him and other employees while they performed nonunion work that the union opposed.⁵ Similarly, in claiming that the Board has found peaceful blockages of short duration to violate 8(a)(1)(A), the majority relies on cases arising during union strikes which, as discussed above, have a natural tendency to coerce employees who choose not to strike.⁶ Finally, the majority seeks to distinguish *Evergreen Nursing* and *Hendricks-Miller* on the basis that the blockages in both cases occurred on fewer occasions and affected a few employees. This surely misses the mark. If, as here, conduct is not coercive, the frequency of its occurrence cannot render it otherwise.

In sum, the momentary stoppage of vehicles that occurred during the Respondent’s peaceful organizational picketing is not the kind of conduct that 8(b)(1)(A) was designed to deter. As there is simply no evidence that

the picketing had a reasonable tendency to coerce employees in the exercise of their Section 7 rights, I would dismiss the complaint.

Dated, Washington, D.C. December 16, 2017

Mark Gaston Pearce,

Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain on your behalf with your employer
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT block or impede Waikiki Beach Hotel employees or others while in the presence of hotel employees from entering or exiting the hotel’s property.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights listed above.

UNITE HERE! LOCAL 5

The Board’s decision can be found at <http://www.nlrb.gov/case/20-CB-163657> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street S.E., Washington, D.C. 20570, or by calling (202) 273–1940.



⁵ And in citing *Electrical Workers Local 98 (Tri-M Group)*, 350 NLRB 1104 (2007), for the same proposition, the majority fails to note that the blockage there lasted approximately 30 minutes, far eclipsing the couple to few minute delay at issue here.

⁶ *Shopmen’s Local 455 (Stokvis Multi-Ton Corp.)*, supra; *Polishers Local 67 (Alco-Cad Nickel Plating Corp.)*, supra.

Jeff Beerman, Esq., for the General Counsel.
David Barber, Esq. (Davis, Cowell & Bowe), for the Respondent.
Robert Katz and Jennifer Gitter, Esqs. (Torkildson, Katz, et al.), for the Charging Party.

DECISION

STATEMENT OF THE CASE

LISA D. THOMPSON, Administrative Law Judge. On November 6, 2015, Aqua-Aston Hospitality, LLC, d/b/a Waikiki Beach Hotel and Hotel Renew (Charging Party, Aqua-Aston or the Hotel) filed an unfair labor practice (ULP) charge against UNITE HERE! Local 5 (Respondent), alleging violations of the National Labor Relations Act (NLRA or the Act).¹ The Hotel amended its ULP charge on December 14, 2015. On December 15, 2016, the Hotel filed a second ULP charge against Respondent.² The Regional Director for Region 20 (Regional Director) issued a complaint and notice of hearing on January 29, 2016, then, on March 30, 2016, consolidated both charges and issued a consolidated complaint and notice of hearing.

The consolidated complaint alleges that Respondent violated Section 8(b)(1)(A) of the Act when, on multiple occasions in 2015, it established a picket line and unlawfully blocked the ingress/egress to the entrance/exit of the Hotel. Respondent filed its answer and amended answer denying all material allegations and setting forth its affirmative defenses to the complaint.

This case was tried before me in Honolulu, Hawaii, on April 19 and 20, 2016. All parties were afforded a full opportunity to appear, introduce evidence, examine and cross-examine witnesses, argue orally on the record, and file briefs. After carefully considering the entire record, including the demeanor of the witnesses and the parties' posthearing briefs, I find that Respondent violated the Act as alleged in the complaint.³

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

At all material times, Aqua-Aston Hospitality, a limited liability company, has been engaged in the business of operating hotels that provide food and lodging. It has a place of business in Honolulu, Hawaii, where it operates and manages the Aston Waikiki Beach Hotel and the Hotel Renew.

Although not specifically admitted in this case, in a separate case, the parties previously admitted that, in conducting its business operations, Aqua-Aston derived gross revenues in excess of \$500,000 and purchased and received at its Honolulu hotel goods valued in excess of \$5000 directly from points outside the State of Hawaii. Accordingly, I find that Aqua-Aston has been an employer engaged in commerce within the

meaning of Section 2(2), (6), and (7) of the Act.⁴

It is also undisputed, and I find that, at all material times, Respondent, UNITE HERE! Local 5, has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts

1. Charging Party's operations

The Aston Waikiki Beach Hotel and the Hotel Renew are two adjacent hotels located in Waikiki. The Aston Waikiki is located on the corner of Kalakaua Avenue and Paoakalani Avenue. Kalakaua Avenue is a one-way street that runs parallel to the ocean. Paoakalani Avenue is also a one-way street that runs perpendicular to Kalakaua Avenue. The entrance to the Aston Waikiki faces Paoakalani Avenue.

The Hotel Renew is located next to the Aston Waikiki on Paoakalani Avenue at the intersection of Lemon Road. Lemon Road is also a one-way street that runs parallel to Kalakaua Avenue.

In order to enter and exit the Aston Waikiki, guests, taxis, and other vehicles must access the property through the hotel's *porte cochere* (driveway). The *porte cochere* is a single-direction, u-shaped driveway with a designated entrance and exit along Paoakalani Avenue.⁵ There is a pedestrian walkway leading from Paoakalani Avenue's sidewalk into the Aston Waikiki that bisects the *porte cochere*.⁶

The *porte cochere* is the only location where guests can drop off their vehicles at the Hotel.⁷ Guests cannot self-park their cars. As such, all of the Hotel's guests must leave and retrieve their parked cars using the valet service located in the *porte cochere*. Similarly, taxis, recently retrieved (but not picked up) valetted-vehicles, and vehicles of persons patronizing the Hotel's restaurant must utilize the *porte cochere* for short-term parking. These cars are parked inside the *porte cochere* near the driveway exit.⁸ All vehicles entering or exiting the Hotel through the *porte cochere* entrance or exit must cross over the public sidewalk along Paoakalani Avenue.⁹

The Aston Waikiki has a single parking garage located on Lemon Road next to the Hotel Renew. Valet employees are the only individuals authorized to park guest vehicles in the parking garage.¹⁰

In order to park a guest's vehicle, valet drivers must exit the *porte cochere*, drive out of the driveway exit, cross over the

⁴ See *Aqua-Aston Hospitality, LLC*, et al., JD(SF)-24-16 2016 WL 3072194 (May 31, 2016). I take administrative notice of the jurisdictional findings of Administrative Law Judge (ALJ) Mara-Louise Anzalone.

⁵ GC Exh. 2; see also GC Exhs. 3-4.

⁶ GC Exhs. 2-4.

⁷ Tr. 41, see also GC Exh. 2.

⁸ U. Exh. 1.

⁹ GC Exhs. 3-4 (photographs of the entrance into the *porte cochere* and exit out of the *porte cochere*. The sidewalk in front of the Hotel is parallel to Paoakalani Avenue).

¹⁰ Tr. 40. Hotel employees have a separate parking lot—also on Lemon Road—where they park their vehicles during their shifts. Employees park their own vehicles when they arrive for work and do not use the Hotel's valet to park their cars. Tr. 108, 110-111.

¹ Case 20-CB-163657.

² Case 20-CB-166055.

³ Abbreviations used in this decision are as follows: "Tr." for the Transcript, "GC Exh." for the General Counsel's exhibits, "U. Exh." for Respondent's Exhibits, "GC Br." for the General Counsel's brief, "U. Br." for Respondent's brief, and "CP Br." for the Charging Party's brief. Specific citations to the transcript and exhibits are included where appropriate to aid review, and are not necessarily exclusive or exhaustive.

Paoakalani public sidewalk to get to Paoakalani Avenue, then park the vehicle in the Hotel's parking garage on Lemon Road.¹¹ Similarly, to retrieve a guest's vehicle, valet drivers must drive around to Kalakaua Avenue, turn right onto Paoakalani Avenue, cross the Paoakalani public sidewalk then drive through the driveway entrance into the Hotel's *porte cochere*.¹² There are approximately 16 valet/bell employees, including a bell clerk and a public area attendant who work at or near the *porte cochere*.¹³ Randy Tolentino (Tolentino) served as one of the Hotel's Bell Captains/valet employees. It is undisputed that he parked guest's vehicles as part of his job duties during the matters at issue in this complaint.

The Charging Party contracts with the Universal Protection Services (UPS) to provide security for the Aston Waikiki and the Hotel Renew. Andrew Smith (Smith) is a UPS employee and serves as the post commander for the Aston Waikiki and Hotel Renew.

2. The Union's organizing campaign

It is undisputed that, beginning February 2015 until mid-March 2016, Respondent began an organizing campaign at the Hotel, which involved numerous union-sponsored rallies and/or pickets in front of, near and around the Hotel.¹⁴ On average, Respondent maintained at least one picket line at least once a week or once every other week since February 2015.

The number of union picketers ranged from approximately 15–37 picketers (small picket) to between 75–200 picketers (larger picket).¹⁵ The larger pickets occurred once or twice a month and were held in the afternoons. Respondent held the smaller-sized pickets in the mornings between approximately 6:30 and 7:30 a.m. During the smaller rallies, Respondent usually maintained picketers in front of the *porte cochere* exit, but on a few occasions, Respondent positioned picketers in front of the *porte cochere* entrance. During the larger rallies, Respondent positioned picketers in two picket lines: one in front of the *porte cochere* exit and one in front of the *porte cochere* entrance.

Whether Respondent picketed in front of the Hotel's driveway entrance or exit or during a morning or afternoon rally, it is undisputed that the participants marched in an oblong circle on the sidewalk, although sometimes the width of the picketers' circle did not accommodate pedestrian traffic. During each of protests at issue, the picketers carried signs that read, "Aston/Renew No Respect, No Union Contract with Unite HERE! Local 5," chanted slogans using bullhorns, banged cans with drumsticks and used other noise makers while they marched in front of the Hotel. It is also undisputed that, while the picketers marched, all vehicles that approached the Hotel, whether they were driven by valets, guests, taxis or the general public, were made to wait and were unable to enter and/or exit the *porte cochere*.¹⁶

Picket line captains were responsible for directing each pick-

et line, monitoring and breaking the line, and stopping vehicular traffic while the picketers marched in front of the Hotel. During all of the protests at issue, Daniel Kerwin (Kerwin), Respondent's director of internal organizing, was the picket line captain covering the driveway entrance. Union organizer Victor Gonzales (Gonzales) served as the picket line captain covering the driveway exit.¹⁷ In directing vehicular traffic during the protests, it is undisputed that, when a car approached the picket line, Kerwin or Gonzales placed themselves between the car and picket line then extended their hand toward the approaching vehicle to signal the vehicle to stop. Thereafter, Kerwin/Gonzales motioned the picketers to continue marching, and, after approximately one to four minutes, they signaled the picketers to "break [or disperse]." After hearing the "break" call, the picketers moved from the driveway exit or entrance—depending on where they were picketing—to allow the vehicle to enter/exit the Hotel. It was within Kerwin's or Gonzales' discretion as to how long he blocked a car from entering/exiting the Hotel.¹⁸ Regardless, the Union's purpose for stopping all vehicles was to "annoy" drivers and bring attention to Respondent's message.¹⁹ It is against this backdrop that the following incidents occurred.

B. Specific Incidents of Alleged Unlawful Conduct

The issue in this case is whether Respondent Union, during its protests, unlawfully blocked the ingress/egress to the entrance/exit of the Hotel on six separate occasions: August 18, October 3, 14, 24, and 30, and December 7, 2015. After carefully reviewing the record, I find the following facts.²⁰

1. The August 18, 2015 picket

It is undisputed that Respondent videotaped all of its pickets. Except for the rally on October 24, 2015, Respondent's videographers did not continuously record the entire picket; rather, they only recorded various segments of the picket.²¹

¹⁷ U. Exh. 1, File 20150818154254 at 6:55, 15:00; see also Tr. 233–234.

¹⁸ Tr. 229, 300, 302, 338–339.

¹⁹ Tr. 203, 298, 324, 328–329, 336, 427.

²⁰ In making my credibility findings, all relevant factors have been considered, including the interests and demeanor of the witness; the impact of bias on the witness' testimony, the quality of the witness' recollection; whether their testimony is corroborated or consistent with the documentary evidence and/or the established or admitted facts; inherent probabilities; and reasonable inferences that may be drawn from the record as a whole. See, e.g., *Daikichi Corp.*, 335 NLRB 622, 633 (2001), *enfd.* 56 Fed. Appx. 516 (D.C. Cir. 2003); and *New Breed Leasing Corp. v. NLRB*, 111 F.3d 1460, 1465 (9th Cir.), *cert. denied* 522 U.S. 948 (1997). Credibility findings need not be all-or-nothing propositions, and it is common for the fact finder to credit some, but not all, of a witness' testimony. *Daikichi Corp.*, *supra*.

²¹ The parties stipulated that all of the videos were taken by individuals who work for the Union. A single camera owned by the Union recorded all of the videos. The Union established a rotating system for recording the pickets. Specifically, different teams of organizers were assigned to film different actions on particular weeks. Thereafter, the camera was given to the next team whose turn it was to film the next union activity. At the end of the day, the camera was returned to the Union office and video was uploaded onto a server. The Union never edited the videos.

¹¹ GC Exhs. 2, 4.

¹² GC Exhs. 2, 3.

¹³ Tr. 403, 418–419.

¹⁴ GC Exh. 5.

¹⁵ GC Exhs. 5, 6.

¹⁶ Tr. 53, 79, 83, 87, 90, 202–203; see also GC Exh. 7, U. Exh. 1.

On Tuesday, August 18, 2015, at approximately 3:30 p.m., Respondent staged an afternoon protest in front of the Hotel. Approximately 170 union members participated. Picketers marched in circular formations in front of the Hotel driveway entrance and exit.²² Kerwin was the picket line captain covering the driveway entrance, and Gonzales served as the picket line captain covering the driveway exit. Two other groups of protesters marched on both sides of Kalakaua Avenue. The majority of the picketers carried signs, chanted, through bullhorns, and used various noise makers during the protest. The Honolulu Police Department (Police or HPD) was called to the Hotel to assist with crowd control and the noise. The protest ended around 4:40 p.m. Respondent videotaped portions of the protest, but the video focused primarily on the picket line in front of the *porte cochere* driveway entrance.²³

Post Commander/Security Supervisor Smith observed some of the picketing on August 18. He testified that approximately 15 to 20 vehicles attempted to either enter or exit the Hotel but were stopped and forced to wait between 30 seconds and four minutes while the Union picketed. Smith timed each vehicles' wait times on his watch. He also observed traffic backed up on Paoakalani Avenue multiple times due to the picketing in front of the driveway entrance. According to Smith, Kerwin made each vehicle wait approximately three to four minutes before allowing access to the Hotel entrance.²⁴ For his part, although Kerwin testified that he stopped cars at the driveway entrance for, at most, 30 seconds during the August 18 protest, he admitted that he did not independently time how long he made each car wait before directing the picket line to move aside.

Overall, I credited Smith's testimony over that of Kerwin. I found Kerwin's testimony less than fully credible, mainly because he gave inconsistent statements and was often evasive when asked about the back up of cars entering the Hotel while he was captain covering the driveway entrance. Specifically, Kerwin initially testified that he could not recall whether any cars were backed up on Paoakalani Avenue during the August 18 protest. Subsequently, Kerwin admitted that he was not paying attention to any backup because he was focused on monitoring the line. Yet, upon further questioning, he recalled seeing "three or four" cars backed up on Paoakalani Avenue waiting to turn into the driveway entrance. However, the video at Union Exhibit 1 clearly shows at least one instance where the Union's picketing caused a backup of traffic on Paoakalani Avenue all the way to Kalakaua Avenue.²⁵

Moreover, Kerwin was equivocal regarding the wait times for the vehicles he stopped. Although Kerwin testified that, in general, he allowed the picketers to march in an oblong circle "twice" before breaking the line, he had no independent confirmation of how long that process lasted. While Respondent's counsel argues that the August 18 video recording is the best

evidence of the approximate wait times of each vehicle, the video is not entirely reliable because it only captured random portions of the protest. In sum, Kerwin's changing testimony on this issue made him appear as if he was less than forthcoming which made his testimony unreliable. Accordingly, I find that, during the August 18 protest, the union picketed in front of the Hotel's entrance, and in so doing, Kerwin made multiple vehicles stop and wait approximately three to four minutes each before they could enter the Hotel. The Union's activity caused a backup of cars from the Hotel's entrance onto Paoakalani Avenue.

2. The October 3, 2015 picket

It is undisputed that Respondent maintained a single, small picket on the morning of October 3 in front of the *porte cochere* driveway exit. The picket lasted from approximately 6:37 to 7:25 a.m. Approximately 17 individuals participated in the picket. Gonzales was the picket line captain that day.²⁶ Smith was working that day and observed the picketing. Again, the picketers carried signs, chanted, through bullhorns, and used other noise makers. The HPD was called to the Hotel to assist with crowd control and the noise. It is undisputed that Respondent recorded approximately 26:48 minutes of video over five separate recordings of the October 3 picket.²⁷

Smith testified that he observed Gonzales stop approximately six or seven vehicles as they attempted to leave the Hotel's *porte cochere*.²⁸ According to Smith, as the Union had done previously, when a vehicle approached the driveway exit, Gonzales held up his hand toward the vehicle to signal the vehicle to stop. Afterwards, Gonzales turned around and motioned the protestors to continue picketing. In fact, on one occasion, a male picketer was overheard saying, "go on, go on, keep going," while a guest's vehicle was blocked from leaving.²⁹ On another occasion, picketers were overhead saying, "wait for a while, a little while longer," as a guest attempted to exit the driveway. That guest was blocked for approximately two minutes before being allowed to leave the Hotel.³⁰ According to Smith, Gonzales and/or the picketers blocked the egress of these six or seven vehicles for between two and four minutes that day.³¹

Although Gonzales testified that, in general, he typically held cars at the driveway exit between 30 seconds and two minutes, or until the picketers marched twice in a circular formation before breaking the line, I credit Smith's testimony for several reasons. First, Smith observed, timed each vehicle's wait time on his watch and noted those times in his incident

²⁶ Tr. 261; see also GC Exhs. 5–6; U. Exh. 1.

²⁷ U. Exh. 1 File AM Rally 630 and File AM Rally 7.

²⁸ Tr. 84; see also GC Exhs 5 at 93–94; U. Exh. 1 File AM Rally 630 and File AM Rally 7. U. Exh. 1 does not extend in time over the entire October 3 protest. Rather, the video shows the wait times experienced by only two vehicles (both approximately one minute). See U. Exh. 1, File AM Rally 630 at 12:16–13:23 and File AM Rally 7 at 0:37–1:37; see also Tr. 353, 438. However, Smith recorded every car that he observed trying to exit the Hotel but was blocked by the Union's picket. See GC Exh. 5 at 93–94.

²⁹ GC Exh. 5 at 94.

³⁰ Id.

³¹ Tr. 84, 279–280; see also GC Exh. 5 at 93–94.

²² GC Exh. 5 at 111; see also GC Exh. 6.

²³ U. Exhs. 1–2. The video of the August 18 picket consisted of six separate recordings that were approximately 57 minutes long in total. The video focused on the Union's picketing activity in front of the *porte cochere* driveway entrance. No records were submitted on the Union's picketing in front of the *porte cochere* driveway exit.

²⁴ Tr. 79–81, 234, 309–312; see also U. Exh. 1.

²⁵ U. Exh. 1, File 20150818154254 at 34:00–35:00.

report.³² His notes were specific and detailed regarding the wait times as well as the picketers' statements, if any, as they blocked each vehicle's egress.

Although Smith testified that, during the October 3 protest, wait times ranged from two to three minutes and his incident reported noted wait times between two and four minutes, his Board affidavit (also known as his *Jencks* statement) claimed that some wait times were as long as five minutes. However, I do not find these varying wait times internally inconsistent but were Smith's attempt to give a range of the wait times of the vehicles he observed on October 3. Rather, I find Smith's recollection and testimony of the wait times generally consistent from between two and four minutes. While I note that Smith contradicted himself about how he recorded vehicle wait times (i.e., Smith initially testified that he did not write down any wait times less than two minutes long, then stated he recorded wait times of less than two minutes, however, other than his observations during the October 14 protest, no wait times of less than two minutes were noted in GC Exh. 5), this discrepancy does not detract from Smith's overall testimony that vehicles he observed were blocked from between two and four minutes during the October 3 protest.

Finally, while Respondent argues that the October 3 video shows the average wait time of vehicles blocked was between 58 seconds and 1.10 minutes, again, the video failed to capture every vehicle that was blocked during the morning protest.³³ As such, the video is not entirely representative of all vehicle's wait times since some vehicles could have been stopped for no more than one minute, while others were blocked for two to four minutes as Smith recorded. Accordingly, I found Smith's testimony credible and that, on October 3, at least six to seven vehicles were blocked by Respondent's picketers for between two to four minutes before being allowed to leave the Hotel.

3. The October 14, 2015 picket

It is undisputed that Respondent held a single, small picket on the morning of October 14 in front of the *porte cochere* driveway exit. The picket lasted from 6:35 to 7:35 a.m.³⁴ Approximately 21 individuals participated in the picket. Gonzales served as the picket line captain that day.³⁵ Smith was also working and he and Security Officer Roberto Vargus observed the picket that day. The picketers again carried signs, chanted, using bullhorns, and used other noise makers during the protest. The HPD was called to the Hotel three times for assistance with crowd control and the noise. It is undisputed that Respondent recorded portions of the October 14 picket.³⁶

Smith testified that he saw at least two vehicles that were stopped while attempting to cross Respondent's picket line. According to Smith, one vehicle drove up to the picket line and tried to exit the Hotel but was stopped by Gonzales and the picketers. That vehicle was stopped at the driveway exit for less

than one minute before reversing and exiting through the *porte cochere* entrance.³⁷ Another vehicle was stopped by Gonzales for approximately 1½ minutes before being allowed to cross Respondent's picket line and exit the *porte cochere*.³⁸ For his part, Gonzales admitted that he typically stopped vehicles for approximately 1½ minutes before allowing them to exit the Hotel.³⁹

4. The October 24, 2015 picket

It is undisputed that Respondent held a single, small picket on the morning of October 24 in front of the *porte cochere* driveway exit. The picket lasted from approximately 6:35 to 7:28 a.m.⁴⁰ Approximately 23 individuals participated in the picket. Gonzales was the picket line captain that day.⁴¹ As with the other protests, it is undisputed that picketers carried signs that read, "Aston/Renew No Respect; No Union Contract with Unite Here Local 5." Picketers also chanted through bullhorns and used various noise makers during the protest. The HPD was called to the Hotel for assistance with crowd control and to "protect . . . the working Hotel employees."⁴² It is undisputed that Respondent recorded a portion of the October 24 picket.⁴³

Hotel security officers on duty observed at least three to four vehicles attempting to exit the Hotel. Each car was stopped by Gonzales and prevented from exiting for approximately three minutes.⁴⁴

Again, while Gonzales testified that, when he served as picket captain on the driveway exit, he generally stopped vehicles for at least 1½ minutes, or to allow picketers to march in a circular formation twice before breaking the line, his testimony is not entirely reliable. Specifically, I note that Gonzales had no objective, independent measure of the wait times of each vehicle. Moreover, while the video of the October 24 protest generally shows wait times ranging from approximately 51 seconds to two minutes, as stated above, the video only captured a portion of the protest and is not representative of the wait times of all the vehicles that attempted to exit the Hotel that day. However, I rely on the incident report made contemporaneous with the October 3 protest in finding that security guards on duty observed and timed that at least three vehicles were blocked from exiting the Hotel for approximately 3 minutes.⁴⁵

³⁷ Id.; see also Tr. 87; GC Exh. 5 at 83. U. Exh. 1 did not record the entire October 14 protest. Rather, the video shows the wait time of one taxi driver (approximately 1:15 minutes). However, Smith recorded every car that he observed trying to exit the Hotel but was blocked by the Union's picket. See GC Exh. 5 at 83.

³⁸ GC Exh. 5 at 83; see also GC Exh. 6; U. Exh. 1 File 20151014064201, File 20151014064259, File 20151014070331, File 20151014070647, File 20151014071005 and File 20151014071803.

³⁹ Tr. 279–280.

⁴⁰ GC Exh. 5–6; U. Exh. 1.

⁴¹ Tr. 267; see also U. Exh. 1.

⁴² GC Exh. 5 at 78.

⁴³ U. Exh. 1 File 10-24-2015.

⁴⁴ Id. The video did not record the wait times of any of the vehicles before they exited the Hotel that day. However, Smith compiled the reports from the security officers on duty that day who observed cars trying to exit the Hotel but were blocked by the Union's picket. See GC Exh. 5 at 78–79.

⁴⁵ GC Exh. 5 at 78–79.

³² See GC Exh. 5 at 93–94.

³³ R. Br. at 10.

³⁴ Tr. 87; GC Exhs. 5–6, see also U. Exh. 1.

³⁵ Tr. 265; see also U. Exh. 1.

³⁶ U. Exh. 1 File 20151014064201, File 20151014064259, File 20151014070331, File 20151014070647, File 20151014071005, and File 20151014071803.

5. The October 30, 2015 picket

It is undisputed that Respondent maintained a single, small picket on the morning of October 30 in front of the *porte cochere* driveway exit. The picket lasted from 6:33 to 7:20 a.m.⁴⁶ Approximately 17 individuals participated in the picket. Gonzales served as the picket line captain that day. Smith and Valet driver Tolentino were also on duty and observed the picket on October 30. As with the other protests, the HPD was called to the Hotel for assistance with crowd control, noise and to secure “the safety of working Hotel employees.”⁴⁷

Smith testified that he observed union picketers block the egress of seven or eight vehicles.⁴⁸ According to Smith, Gonzales/pickers detained most vehicles for approximately two to four minutes that day, but he noted in his incident report that vehicles were detained from between one and two minutes that day.⁴⁹ Specifically, one vehicle, who was detained for about a minute, exited through the driveway entrance when he became inpatient because he was prevented from leaving through the driveway exit.⁵⁰ Another vehicle was blocked for about 1 minute.

Tolentino testified that, on October 30, he was stopped by Respondent’s picket line three times while he valeted cars that day. According to Tolentino, Smith made eye contact with him the first time that Tolentino was stopped by Gonzales and Smith timed how long Tolentino was blocked. Both believed that Tolentino was stopped by Gonzales for between two and three minutes on that first occasion. Tolentino also testified that, on the other two occasions he valeted cars, he was stopped between two and four minutes when he tried to exit the Hotel that morning.⁵¹

Tolentino also witnessed other valet drivers being prevented from exiting the Hotel. According to Tolentino, he saw several guests drive their vehicles out of the driveway entrance to avoid the picketers stationed at the exit. Tolentino noted that when one guest was blocked for several minutes from exiting the Hotel he became so frustrated with the wait he accelerated his vehicle toward the picketers as if he was going to hit them.⁵² Again, Gonzales admitted that, when he served as picket captain on the driveway exit, he generally stopped vehicles for at least 1½ minutes.

Overall, I credit Gonzales’ testimony that he stopped vehicles for about 1½ minutes as his testimony is corroborated with the documentary evidence. However, I found Smith’s and Tolentino’s testimony less than credible regarding vehicle wait times on October 30. Specifically, Smith’s and Tolentino’s testimony that vehicles waited between two to three minutes is belied by Smith’s own incident report, which shows vehicles waited more than two minutes before being allowed to exit the Hotel. To that end, I agree with counsel for Respondent that Smith/Tolentino either overestimated or exaggerated the wait

times on October 30. Rather, I primarily rely on the documentary evidence which reveals that, during the October 30 protests, vehicles were blocked from egress for between one to two minutes.⁵³ To a lesser extent, I rely on the October 30 recordings of the protests that generally corroborate the one to two minute wait times of the vehicles recorded on the video. Accordingly, I find that, during the October 30 protests, vehicles were blocked from egress for between 1 to 2 minutes.

6. The December 7, 2015 picket

It is undisputed that Respondent maintained a single, small picket line on the morning of December 7 in front of the *porte cochere* driveway exit. The picket lasted from 6:25 to 7:24 a.m. Again, approximately 17 individuals participated in the picket. Gonzales was the picket line captain that day.⁵⁴ Smith was on duty that day and observed the entire rally. Tolentino also valeted cars that morning. Picketers carried signs that read, “Aston/Renew No Respect, No Union contract with Unite Here! Local 5.” They chanted, through bullhorns and used various noise makers during the protest. The HPD was called to the Hotel for assistance with crowd control, the noise and “for the safety of non-working hotel employees.”⁵⁵

Tolentino testified that he was stopped by Gonzales at least once while valeting vehicles that morning. He believed he was blocked from exiting the Hotel between two to four minutes.⁵⁶ Moreover, at least four guests and one other valet driver were forced to drive their vehicles out of the driveway entrance due to the picketing.⁵⁷ In addition, a taxi was blocked for approximately two minutes before exiting through the driveway exit. Accordingly, I find that, on December 7, vehicles were blocked from egress for between two and four minutes.

Lastly, it is undisputed that, throughout all the days of the protests/pickets, no threats or other negative language or gesture were directed at valets as they drove vehicles into or out of the *porte cochere*. In fact, some of the picket captains gave the valets the “thumbs up” or the “Shaka” sign – a hand gesture/greeting used to say “hello” as they drove through the line. In fact, many of the valets, except Tolentino, smiled at the picket captains and/or responded using the “Shaka” sign as they drove into or out of the *porte cochere*.

III. DISCUSSION AND ANALYSIS

The complaint alleges, and the General Counsel and Charging Party contend, that Respondent’s conduct in blocking the ingress/egress of vehicles entering and exiting the Hotel’s *porte cochere* during its picketing was coercive and violated Section 8(b)(1)(A) of the Act. Respondent denies the allegation, essentially arguing that if some blocking occurred, the conduct did not amount to restraint or coercion; rather, constituted nothing more than a minor inconvenience lasting at most, a few minutes in length. Alternatively, Respondent argues that no violation occurred since the picketing was not directed at employees and ultimately, no employees’ rights were restrained. I disagree

⁴⁶ Tr. 90; see also GC Exh. 5–6.

⁴⁷ GC Exh. 5 at 72.

⁴⁸ Tr. 90, 194; see also GC Exh. 5 at 72–74.

⁴⁹ Tr. 90–91, see GC Exh. 5 at 72–73.

⁵⁰ GC Exh. 5 at 73.

⁵¹ Tr. 91–92, 192–194.

⁵² Tr. 162, 209; see also GC Exh. 5 at 73.

⁵³ GC Exh. 5 at 73.

⁵⁴ GC Exh. 7; U. Exh. 1.

⁵⁵ GC Exh. 5 at 49.

⁵⁶ Tr. 196–197.

⁵⁷ GC Exh. 5 at 49–50.

with Respondent and find a violation occurred.

A. Legal Principles

To establish a Section 8(b)(1)(A) violation, there must be: (1) restraint or coercion, (2) by a labor organization or its agents, (3) against employees in the exercise of rights guaranteed in Section 7 of the Act.⁵⁸ It is well settled that the union's conduct in blocking the ingress/egress from an employer's facility constitutes restrained, coercive conduct violative of Section 8(b)(1)(A).⁵⁹ Although, in certain circumstances, single, isolated, brief or momentary delays to the entry or exit of the employer's facility may not violate the Act,⁶⁰ in general, the Board has found that the blocking of a vehicle's ingress/egress, even for a short period of time, is coercive and violative of the Act.⁶¹ The test for determining restraint or coercion is an objective one which focuses on whether the blocking is such that, under the circumstances, may reasonably tend to coerce or intimidate employees in the exercise of rights of their Section 7 rights.⁶² Although not a bright line rule, the Union's conduct will violate the Act when it's "pattern of conduct evidenc[es] a strategy of refusing to limit [its] picket to peaceful appeals for support."⁶³

B. Analysis

In this case, the evidence clearly demonstrates that the Union blocked the ingress/egress of many vehicles over several days for between one to three minutes.

The record evidence makes clear, and it is uncontested, that at various times during the picketing on August 18, October 3, 14, 24, and December 7, 2015, the Union intentionally blocked the ingress/egress of valet employees (and other guests, taxis and patrons) from entering or leaving the Hotel when the Union's picket captains positioned themselves between the vehicles and the entrance/exit to the Hotel. Photographs and video recordings show how picket captains Kerwin and Gonzales extended their hand signaling each driver (including valet employees) to stop for periods ranging on average between two and four minutes while the picketers marched in front of the Hotel entrance/exit. I generally credited the documentary evidence and the General Counsel's witnesses (where the testimo-

ny was corroborated by the documentary evidence) of having personally observed on numerous occasions various vehicles driven by valet employees being blocked on average for between 2 to 3 minutes.

Credited testimony also demonstrates that, at least on one occasion on August 18, the Union held up vehicles so long that traffic backed up onto Paoakalani Avenue. Such a line of traffic would have been seen by valet and other non-striking employees as they began work for the day. As such, I reject Respondent's argument that whatever blocking that may have occurred was brief and merely inconvenienced vehicles, and as such, did not rise to the level of restraint or coercion under the Act.⁶⁴ On the contrary, I note that, for the August 18 protest, Respondent presented no evidence, and for the October 3 protest, Respondent presented little evidence to contradict Smith's account of the two to three minute wait times for vehicles to enter/exit the Hotel during the Union's picket. As found above, the blocking of vehicles, even for a brief period, as was the case here, is coercive and violates the Act.⁶⁵ Moreover, unlike the case in *SEIU Local 525*, 329 NLRB 638 (1999), where the Board found the blocking of a single coworker from entering the worksite by the Union on one occasion inconsequential, the blocking that occurred in this case occurred repeatedly for several minutes at a time on eight separate occasions. Viewing the totality of the circumstances, I find that the Union's picketing activities would reasonably tend to coerce or intimidate employees in the exercise of rights of their Section 7 rights.

Respondent also argued that no employee's rights were restrained since its pickets were not directed at non-striking employees. I disagree. Indeed, the valet employees were directly affected by and prevented from entering/exiting the Hotel due to Respondent's pickets. Moreover, the fact that some valet employees responded positively to the picket by using the "Shaka" sign does not negate the fact that those employees were blocked from entering/exiting the Hotel. Furthermore, it is undisputed that the Union protests were loud, with chanting, shouting slogans using bullhorns, and carrying picket signs. Most significantly, the record reveals that the police were called to intervene on each day of the protests for crowd control, the noise and for the safety of other nonstriking employees. As such, it is certainly reasonable to conclude that non-striking employees would have seen/heard the commotion of the Union's protests and redirected themselves away from the front of the Hotel. Such activity constitutes a restraint on those employees' right to be free to refrain from participating in the Union's protests.⁶⁶

⁵⁸ *Longshoremen ILWU (Sunset Line and Twine, Inc.)*, 79 NLRB 1487, 1504 (1948).

⁵⁹ *Tube Craft*, 287 NLRB 491, 493 (1987)(union violated the Act where its picket intentionally blocked the entrance and prevented employee access to an employer's facility for about 2 ½ to 65 minutes multiple times over an 8-day period).

⁶⁰ See *SEIU Local 525*, 329 NLRB 638, 655 (1999), enfd. 52 Fed. Appx. 357 (2002) (Board found no violation when, in a single incident, two strikers, for 2 to 3 minutes, impeded a single coworker from entering the employer's premises while one of the strikers placed his hand on the coworker's shoulder. The Board considered the incident "momentary and noncoercive, amounting to an inconsequential act of misconduct.").

⁶¹ *Int'l Union of Operating Engineers Local No. 17 (Hertz Equipment Rental Corp.)*, 335 NLRB 578, 584 (2001); *Sheet Metal Workers Local 19 (Delcard Associates)*, 316 NLRB 426, 431 (1995).

⁶² *Carpenters (Society Hill Towers)*, 335 NLRB 814, 815 (2001), enfd. 50 Fed. Appx. 88 (3d Cir. 2002); see also *Plumbers Local 38 (Bechtel Corp.)*, 306 NLRB 511, 518 (1992).

⁶³ *Carpenters*, supra.

⁶⁴ See e.g., *Evergreen Nursing Home & Rehab Center*, 198 NLRB 10, 12 (1972) (finding that the union had not violated Sec. 8(b)(1)(A) when, among other things, it placed two chairs on either side of a driveway that still allowed vehicles to pass between them).

⁶⁵ *Sheet Metal Workers Local 19 (Delcard Assoc.)*, supra at 431.

⁶⁶ Respondent raised several affirmative defenses to this complaint; namely, that the allegations herein fail to state a claim, are time barred pursuant to Sec. 10(b) of the Act, and that its conduct was protected under Sec. 8(c) of the Act and by the First Amendment. However, since I found that Respondent's conduct in blocking the ingress/egress of vehicles, including those driven by valet employees, violate Sec. 8(b)(1)(A) of the Act, I reject all of Respondent's defenses for the

Accordingly, I find that Respondent's conduct in blocking multiple vehicles seeking to enter/exit the Hotel's *porte cochere* was coercive and violated Section 8(b)(1)(A) of the Act as alleged in the complaint.

CONCLUSIONS OF LAW

1. The Charging Party, Aqua-Aston Hospitality, LLC, which operates the Aston Waikiki Beach Hotel and Hotel Renew, is an employer engaged in commerce with the meaning of Sections 2(2), (6), and (7) of the Act.

2. Respondent, UNITE HERE! Local 5, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(b)(1)(A) of the Act by blocking the ingress and/or egress to the Aston Waikiki Beach Hotel on August 18, October 3, 14, 24, and 30, and December 7, 2015.

4. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent UNITE HERE! Local 5 has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶⁷

ORDER

The Respondent, UNITE HERE! Local 5, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Blocking vehicles seeking to enter/exit the Aston Waikiki Hotel in Honolulu, Hawaii.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its offices in Honolulu, Hawaii, copies of the attached notice marked "Appendix"⁶⁸ in both English, Ilocano and Tagalog. Copies of the notice, on forms provided by the Regional Director for Subregion 37, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to em-

ployees and members⁶⁹ are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees and members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Within 21 days after service by the Region, deliver to the Regional Director for Subregion 37 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated: Washington, D.C., January 18, 2017.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT block your ingress or egress to the entrance or exit of the Aston Waikiki Hotel's *porte cochere*.

WE WILL NOT in any other manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days after service by the NLRB's Subregion 37, post at our offices in Honolulu, Hawaii, copies of this notice marked "Appendix" in both English, Ilocano and Tagalog advising you of your Section 7 rights.

UNITE HERE! LOCAL 5

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/20-CB-163657 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

reasons and authorities cited by the General Counsel and Charging Party.

⁶⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁶⁸ If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

⁶⁹ The notice should be addressed to "EMPLOYEES AND MEMBERS" where a union violates the Act in a manner that affects both members and nonmembers. *Postal Workers Local 735 (Postal Service)*, 342 NLRB 545 (2004).



Jeff F. Beerman, Esq., for the General Counsel.

David L. Barber, Esq. (Davis, Cowell & Bowe, LLP),¹ for the Respondent Union.

Christine K.D. Belcaid, Esq. (Torkildson, Katz, Moore, Hetherington & Harris), for the Charging Party Employer.

DECISION

JEFFREY D. WEDEKIND, Administrative Law Judge. The complaint in this case alleges that the Respondent Union, UNITE HERE! Local 5, unlawfully picketed at the Aston Waikiki Beach Hotel in Honolulu between mid-December 2015 and late January 2016 in a manner that deliberately and repeatedly impeded vehicles from exiting the hotel's front semi-circular driveway.²

It is the second such complaint issued against the Union. The first (Case 20–CB–163657) alleged similar unlawful picketing at the hotel in August, October, and early December 2015. On January 18, 2017, Administrative Law Judge Lisa D. Thompson issued a decision in that case finding that the picketing violated Section 8(b)(1)(A) of the National Labor Relations Act as alleged. *Unite HERE! Local 5 (Waikiki Beach Hotel)*, JD(SF)–50–16, 2017 WL 219678.

As discussed below, the same conclusion is warranted regarding the picketing at issue here.

I. FACTUAL BACKGROUND

As in the prior case, the relevant facts are generally undisputed and well documented both by hotel security reports and notes (Jt. Exh. 1E, pp. 24–45, GC Exhs. 3, 5, 6), and by video taken by the Union itself (R. Exh. 1). On each of the subject days (Dec. 15 and Jan. 9, 16, and 29), the Union set up a picket line on the public sidewalk in front of the hotel for about an hour in the early morning or late afternoon.³ The number of pickets varied, from about 10 to 60 at a time. But, regardless of

the number, the pickets marched back and forth on the sidewalk in a narrow oblong circle that extended across the exit of the hotel's semi-circular driveway. They displayed picket signs (stating “No Respect” and “No Union Contract”), chanted or sang pronoun songs (sometimes with bullhorns), and otherwise made noise (such as by shaking metal cans with coins in them or banging pots or pans).⁴

A picket captain employed and trained by the Union directed the pickets when to start and stop marching. If a vehicle approached the exit, the captain stood in the middle of the driveway and signaled the driver to stop by extending his arm with his palm facing outward. The captain then waited there for about 1–2 minutes for the picket line to make one to two full rotations (depending on the length of the picket line) before calling for the line to stop and break so the vehicle could drive out.⁵

Although the picket captain had complete discretion, and could have stopped the line immediately, he made the vehicles wait in order to draw more attention to the picketing. See Jt. Exh. 1A, p. 327 (the purpose of keeping vehicles waiting “is to be a little annoying to get a point across, to get your message out”); and 427 (the captain keeps the vehicles waiting “because we get more attention when we’re in front of those cars for a little bit longer. It draws more attention to the action.”). Even if a driver lost patience or expressed an urgent need to exit and honked and/or drove the vehicle up close to the captain's legs, he would not move aside. See R. Exh. 1, Dec. 15, 6:51 am, at 59 seconds; and Jan. 29, 4:01 pm, at 1 minute and 20 seconds. Nor would he indicate how long he was going to make the driver wait.

The picket captain followed this same procedure even if the vehicle was being driven by a uniformed hotel valet rather than a guest or taxi driver. The hotel valet/bell stand is on the exit side of the driveway near the top of the semi-circle. The valets regularly drive the guest vehicles from there out the exit to the hotel garage. (Guests are not allowed to park their vehicles in the garage themselves.) And the hotel security reports and notes confirm that, on January 29, when numerous vehicles were delayed attempting to exit, at least seven were driven by a valet (Jt. Exh. 1E, pp. 24–27; GC Exh. 3; Tr. 33–45).

There is insufficient evidence that any vehicles driven by hotel valets were delayed exiting on the other three days at issue. On December 15, numerous vehicles were delayed, but there is no evidence that they were driven by a valet (Jt. Exh. 1E, pp.

¹ Davis, Cowell & Bowe, LLP recently changed its name to McCracken, Stemberman & Holsberry, LLP.

² The Regional Director issued the complaint on August 31, 2016, and the Union filed its answer a few weeks later on September 14. The hearing was subsequently held on December 12, and the General Counsel and the Respondent Union filed their posthearing briefs on January 13, 2017. The Board's commerce jurisdiction is undisputed and established by the uncontested facts and findings by Administrative Law Judge Mara-Louise Anzalone in *Aston Waikiki Beach Hotel*, 20–CA–154749, JD(SF)–24–16, 2016 WL 3383760 (May 31, 2016), of which I take judicial notice.

³ The picketing occurred in the early morning (about 6:30 to 7:30 am) on December 15 and January 9 and 16, and in the late afternoon (about 3:30 to 4:30 pm) on January 29. Although the record includes evidence of picketing on other dates, the complaint allegations are limited to the four dates in December 2015 and January 2016 (Tr. 19–20).

⁴ The Union is not currently the bargaining representative of the hotel employees.

⁵ There were a few exceptions. In some instances, the picket captain stopped and broke the line in less than a minute or after more than 2 minutes. See, e.g., R. Exhs. 1, 2, and Jt. Exh. 1E, p. 45 (Dec. 15). And, if the line was unusually small, the captain might let it fully rotate three times before calling for it to stop and break. See R. Exh. 1, Dec. 15, 6:51 am, beginning at 30 seconds, when the vehicle approached the exit, and ending at 2 minutes and 10 seconds, when the vehicle drove out (showing that the captain allowed the line, which included only 8 marching pickets, to rotate three and a half times before directing it to stop and break).

44–45; R. Exh. 1). As for January 9, only a taxi was delayed.⁶ Although two other vehicles drove out the entrance on the opposite end of the driveway, the drivers were not identified (Jt. Exh. 1E, pp. 38–39; GC Exh. 5; R. Exhs. 1, 2; Tr. 58). The same is true on January 16; a taxi and another vehicle were delayed at the exit, and numerous vehicles drove out the entrance instead, but there is no evidence that any of them were driven by a valet (Jt. Exh. 1E, pp. 34–35; GC Exh. 6; R. Exhs. 1, 2; Tr. 59).⁷ However, it is undisputed that the valet and bell employees would have been able to observe the foregoing incidents from the valet/bell stand.

II. LEGAL ANALYSIS

Under Section 8(b)(1)(A) of the Act, it is unlawful for a union to picket an employer's premises in a manner that intentionally blocks employees' ingress or egress. Such picketing is unlawful regardless of whether the employees are attempting to enter or exit at the beginning or end of the workday, or are attempting to perform their assigned tasks during the workday. See *Electrical Workers Local 98 (Tri-M Group)*, 350 NLRB 1104, 1107–1108 (2007) (finding the picketing unlawful because it temporarily blocked an employee from driving a backhoe out onto the street to drop his load into a dumpster).⁸ It is also generally unlawful regardless of whether it blocks employees' ingress or egress for a short or a long period of time, and/or whether it is accompanied by other violent or threatening conduct. See *Shopmen's Local 455 (Stokvis Multi-Ton Corp.)*, 243 NLRB 340, 348 (1979) (finding the picketing unlawful even though it blocked a truck that was attempting to back into the employer's loading dock for only about 5 minutes); and *Metal Polishers Local 67 (Alco-Cad Nickel Plating Corp.)*, 200 NLRB 335, 336, 339–340 (1972) (finding the picketing unlawful even though it blocked a vehicle that was transporting labor pool employees for only 3–5 minutes and was not accompanied by other physical violence), and cases cited there.

Union picket-line misconduct directed toward nonemployees likewise violates Section 8(b)(1)(A) of the Act if it occurs in the presence of employees. See *Local Joint Executive Board of Las Vegas (Casino Royale)*, 323 NLRB 148, 159 (1997), and cases cited there. Thus, even if picketing does not block employees' ingress or egress, it is unlawful if it blocks other indi-

viduals' ingress or egress in the presence of employees. See, e.g., *Shopmen's Local 455*, 243 NLRB at 346 (finding the picketing unlawful because it blocked a truck driven by a manager from departing the loading dock for several minutes until the police intervened, and employees would have observed or heard about the incident).

As indicated by the General Counsel and Aqua-Aston, the subject picketing here was clearly unlawful under the foregoing principles. As fully discussed above, on January 29 the pickets, at the direction of the union picket captain, deliberately, repeatedly, and persistently blocked numerous vehicles, including at least seven driven by hotel valet employees, from exiting for 1–2 minutes at a time. The pickets engaged in similar conduct on December 15 and January 9 and 16, likewise at the direction of the picket captain, temporarily blocking numerous vehicles in the presence or view of the hotel valet and bell employees.⁹

Contrary to the Union's contention, such calculated and recurring conduct cannot reasonably be excused as minor or de minimis. Nor can it be equated with the relatively few "haphazard" and/or isolated attempts to temporarily block ingress or egress that the Board found did not rise to the level of an 8(b)(1)(A) violation in *Service Employees Local 50 (Evergreen Nursing Home)*, 198 NLRB 10, 12 (1972), and *Hendricks-Miller Typographic Co.*, 240 NLRB 1082, 1099 (1979).

CONCLUSIONS OF LAW

By picketing the Aston Waikiki Beach Hotel on December 15, 2015 and January 9, 16, and 29, 2016 in a manner that deliberately and repeatedly impeded hotel valets or others in the presence of hotel valet and bell employees from exiting the hotel for approximately 1–2 minutes at a time, UNITE HERE! Local 5 committed unfair labor practices in violation of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

REMEDY

The appropriate remedy for the violations found is an order requiring UNITE HERE! Local 5 to cease and desist from its unlawful conduct and to take certain affirmative action. The latter properly includes a requirement that the Union post a notice to employees and members, and to provide signed copies of that notice for voluntary posting by the hotel as well. Further, given that many of the hotel employees apparently speak the Philippine dialects Ilocano or Tagalog,¹⁰ rather than English, as their primary language, the notices must be posted in all three languages. See, e.g., *Teamsters Local 455 (Cargill Meat Solutions Corp.)*, 364 NLRB No. 127 (2016).

⁶ Contrary to Aqua-Aston's brief (p. 8), the videotape for January 9 does not show the type of vehicle being delayed at the exit. Only the glow from the headlights is visible. Thus, it is not clear that another vehicle besides the taxi noted by the security officer was delayed at the exit that morning.

⁷ Contrary to Aqua-Aston's brief (pp. 8–9), the evidence does not show that the vehicles drove out the entrance on January 9 and 16 because they had been "completely prevented" from departing through the exit. The hotel security reports state only that the vehicles departed via the front entrance "due to protest[] activity at the front exit" (Jt. Exh. 1E, pp. 34–35, 40). Further, it is uncontroverted that the union picket captain always let vehicles pass through the line eventually (Tr. 86).

⁸ See also *Electrical Workers Local 98 (MCF Services)*, 342 NLRB 740, 752 (2004), enf'd. 251 Fed. Appx. 101 (3d Cir. 2007) (union agent used his personal vehicle to temporarily block an employee from driving a forklift to a dumpster).

⁹ As indicated above, it is undisputed, and ALJ Thompson found, that the Union previously engaged in such conduct in August, October, and early December 2015 as well.

¹⁰ See ALJ Anzalone's decision in *Aston Waikiki Beach Hotel*, supra. I also take judicial notice that some of the hotel employees testified through an Ilocano-language interpreter at a recent hearing in another case involving the same parties, *Aston Waikiki Beach Hotel*, 20–CA–167132.

ORDER¹¹

The Respondent, UNITE HERE! Local 5, Honolulu, Hawaii, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Blocking or impeding Aston Waikiki Beach Hotel employees or others in the presence of hotel employees from entering or exiting the hotel property.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its offices in Honolulu, Hawaii, copies of the attached notice marked "Appendix" in English, Ilocano, and Tagalog.¹² Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Within 14 days after service by the Region, sign and return to the Regional Director sufficient copies of the notice in all three languages for physical and/or electronic posting by Aqua-Aston Hospitality, LLC, if willing, at all places or in the same manner as notices to the hotel employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official

¹¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., January 27, 2017

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT block or impede Aston Waikiki Beach Hotel employees or others in the presence of hotel employees from entering or exiting the hotel property.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights listed above.

UNITE HERE! LOCAL 5

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/20-CB-171212 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

I am a citizen of the United States and a resident of the State of California. I am over the age of eighteen years and not a party to the within matter. My business address is 595 Market Street, Suite 800, San Francisco, CA 94105. On January 4, 2018, I served a copy of the following document(s) described on the interested party(ies) in this action as follows:

PETITION FOR REVIEW

UNITE HERE! LOCAL 5, *Petitioner,*
National Labor Relations Board, *Respondent,*

On Appeal from National Labor Relations Board

Cases Nos. 20-CB-163657, 20-CB-166055, and 20-CB-171212

[X] U.S. MAIL: By placing a true copy thereof enclosed in a sealed envelope(s) addressed as below, and placing each for collection and mailing on that date following ordinary business practices. I am “readily familiar” with this business’s practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope with postage fully prepaid.

Jill H. Coffman, Regional Director
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13 I declare under penalty of perjury under the laws of the State of California
14 that the above is true and correct. Executed on January 4, 2018, at San Francisco,
15 California.

16 /s/ Verna Owens

17 Verna Owens
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